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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/788,624

02/27/2004

Troy L. Cooper

17319

6525

26637

7590

07/13/2005

CNH AMERICA LLC  
INTELLECTUAL PROPERTY LAW DEPARTMENT  
700 STATE STREET  
RACINE, WI 53404

EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/788,624

Applicant(s)

COOPER ET AL.

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 8-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 523,508 to Bauer et al. in view of the individual and collective teachings U.S. Patent No. 1,096,478 to Weller (cited in previous Office action), U.S. Patent No. 1,168,594 to Berendes, and U.S. Patent No. 1,391,593 to Sweeting

The Bauer '508 patent discloses a disk blade scraper having a bracket (c) connected to the frame and a rotating disk (e) mounted to the bracket and having an axis of rotation and a circumference parallel to the axis of rotation. The bracket is connected to the frame and the rotating disk is mounted to the bracket such that the circumferential edge of the rotating disk is adjacent the transition joint of the disk (intersection of disks and shaft C). Note: The Bauer '508 patent does not show the some of the details of the tillage implement recited in the preamble of the instant claim, specifically, the plurality of disk blades arranged on the shaft and the hub extending between the disk blades. But the preamble of the instant claim 1 recites "[a] **disk blade scraper** for a tillage implement [having the aforementioned arrangement], **the scraper** comprising:" (emphasis added). Thus, the tillage implement is the intended use of the claimed disk blade scraper, and a disk blade scraper, such as the one Bauer discloses, anticipates as long as it has the claimed structural elements of the instant claims and is capable of performing the

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intended use, i.e., capable of being used on the intended structure. See In re Schreiber, 128 F.3d 1473 (Fed. Cir. 1997). What the Bauer '508 patent does not disclose is that the bracket (c) is between the rotating disk (i.e., the cleaning disk) and the one of the pair of disks (i.e., the disk to be cleaned). The Weller '478, Berendes '594 and Sweeting '593 patents individually and collectively teach that it is known in the art to provide a rotating disk disk blade scraper with the supporting bracket located between the rotating disk and the disk to be cleaned. In view of these collective and individual teachings, it would have been an obvious alternative construction to one having ordinary skill in the art to provide the bracket (c) the disk blade between the rotating disk and the disk to be cleaned.

Regarding claims 2-7: The circumferential edge of the rotating disk is adjustable and can be adjusted from a position contacting the transition joint to a position between 0.03 to 0.13 inches away from the transition joint. See lines 61-64. The rotating disk is located in the annular depression of the concave disk. See lines 46-47. The upper most edge of the rotating disk does not extend above the uppermost edge of the disk blade. See the Figure.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

As described in paragraph 2 above, the Weller, Berendes, and Sweeting patents individually and collectively teach providing a disk blade scraper in which the supporting bracket is located between the rotating cleaning disk and the disk blade.

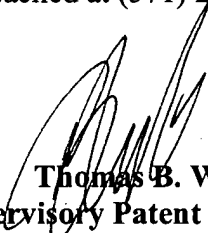
***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (571) 272-6991. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (571) 272-6998. The fax number for this Group is (571) 273-8300.

  
**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**NSM**  
**7/7/05**

Nathan S. Mammen